

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG -2 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STANLEY D. FRANK,)	2 CA-HC 2012-0004
)	DEPARTMENT A
Petitioner/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
THE STATE OF ARIZONA,)	
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV201104283

Honorable Bradley M. Soos, Judge Pro Tempore

AFFIRMED

Stanley D. Frank

Florence
In Propria Persona

Thomas C. Horne, Arizona Attorney General
By Michael E. Gottfried

Phoenix
Attorneys for Respondent/Appellee

BRAMMER, Judge.

¶1 In this appeal from the denial of his petition for habeas corpus relief and request for declaratory judgment, Stanley Frank asserts several claims of error against the trial court that denied his current petition, as well as the trial court that deemed his previous petition to be one for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Because we agree that Frank’s petition was subject to dismissal, we affirm.

¶2 After a Mohave County jury trial in 1993, Frank was convicted of sexual conduct with a minor and two counts of child molestation, all dangerous crimes against children. The trial court imposed consecutive sentences totaling fifty-four years’ imprisonment. Frank’s convictions and sentences were affirmed on appeal in 1995. Thereafter, Frank filed a timely notice of post-conviction relief pursuant to Rule 32. The court denied relief, and review of that decision was denied. Frank filed a second notice of post-conviction relief in 2000, and again the court denied relief and review of that decision was denied.

¶3 In 2010, Frank filed a petition for a writ of habeas corpus in Pinal County, arguing his sentence was illegal and certain sentencing statutes were unconstitutional. The Pinal County court deemed the petition one for post-conviction relief and transferred the matter to Mohave County. Frank appealed from that order, but this court dismissed the appeal for lack of jurisdiction. The Arizona Supreme Court denied Frank’s subsequent petition for review of that decision.

¶4 In December 2011, Frank filed a second petition for a writ of habeas corpus, including a request for declaratory judgment, arguing (1) the Pinal County court had “suspend[ed]” his “right to proceed on habeas corpus” by treating his original

petition for a writ of habeas corpus as a Rule 32 petition; (2) his sentence “is void, or no longer enforc[ea]ble” because the sentencing court “exceeded [its] jurisdiction by ignoring” the sentencing statutes, because the sentencing statutes violated several of Frank’s constitutional rights, and because his sentences did not comply with the sentencing statutes; and (3) Rule 32.3 and A.R.S. § 13-4233 “do not, and cannot, impair the right to proceed on [a] writ of habeas corpus.” The trial court denied the petition “as barred by res judicata and barred by A.R.S. § 31-201.01(L)” and vacated “all future hearings,” ordering the case closed. Frank filed a notice of appeal from that order.

¶5 In this court, Frank raises numerous issues, including: an argument that “habeas corpus is available independently from” Rule 32; challenges to the transfer of his first petition for a writ of habeas corpus to Mohave County; challenges to the trial court’s ruling that his current petition is barred; and a claim the court improperly failed to rule on his request for declaratory judgment. In response, the state argues, as it did below, that Frank’s claims are barred by res judicata or claim preclusion and that he cannot seek declaratory judgment relief. “The decision whether to issue a writ of habeas corpus is entrusted to the sound discretion of the trial court, and we will not disturb the trial court’s decision unless we see an abuse of that discretion.” *State v. Cowles*, 207 Ariz. 8, ¶ 3, 82 P.3d 369, 370 (App. 2004).

¶6 First, claims relating to the treatment of Frank’s first petition for a writ of habeas corpus as a Rule 32 petition and the transfer of that petition to Mohave County cannot be raised in this proceeding. Frank failed to challenge the Mohave County court’s ruling in that matter when he did not file a timely petition for review pursuant to Rule

32.9. And, on that ground, in April 2011, our supreme court dismissed a “consolidated petition for declaratory judgment and for writ of habeas corpus” Frank had filed after the Mohave County court had ruled.

¶7 Next, although in his petition below Frank attempted to characterize his claims as relating to the sentencing judge’s jurisdiction,¹ his claims actually relate to the propriety of his sentences and the judge’s alleged failure to apply the sentencing statutes correctly. Such claims are properly addressed in a Rule 32 proceeding. Ariz. R. Crim. P. 32.1(a), (c); Ariz. R. Crim. P. 32.3; *State v. Manning*, 143 Ariz. 139, 141, 692 P.2d 318, 320 (App. 1984). When

a defendant applies for a writ of habeas corpus in a trial court having jurisdiction of his or her person raising any claim attacking the validity of his or her conviction or sentence, that court shall under this rule transfer the cause to the court where the defendant was convicted or sentenced and the latter court shall treat it as a petition for [post-conviction] relief.

Ariz. R. Crim. P. 32.3. Thus, the trial court should have treated Frank’s petition as a petition for post-conviction relief and transferred the case to Mohave County Superior

¹Our supreme court has stated, “In Arizona, the writ of habeas corpus may be used only to review matters affecting a court’s jurisdiction.” *In re Oppenheimer*, 95 Ariz. 292, 297, 389 P.2d 696, 700 (1964). And, “The writ of habeas corpus is not the appropriate remedy to review irregularities or mistakes in a lower court unless they pertain to jurisdiction.” *State v. Court of Appeals*, 101 Ariz. 166, 168, 416 P.2d 599, 601 (1966). Presumably for that reason, Frank has attempted to characterize some of his claims as jurisdictional. But, Rule 32 includes a challenge to the court’s jurisdiction as a ground for post-conviction relief, Ariz. R. Crim. P. 32.1(b), and the comment to that rule states, “It is intended that this rule encompass all the grounds presently available in Arizona under a writ of habeas corpus.” Because Frank’s claims actually are challenges to the propriety of his sentence, clearly subject to Rule 32, we need not resolve here whether a purely jurisdictional challenge can be raised in a petition for a writ of habeas corpus or whether such a claim is subject to Rule 32.

Court, which, in turn, should have summarily dismissed Frank’s claims as precluded. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). But we will affirm a trial court if its ruling is correct for any reason, *cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court obliged to affirm trial court’s ruling if result legally correct for any reason), and the court here correctly denied relief. Therefore we affirm its conclusion that Frank’s petition should be denied, albeit for a different legal reason—that his claims are precluded. *See* Ariz. R. Crim. P. 32.2(c) (any reviewing court may find issue precluded).

¶8 Frank also requested a declaratory judgment determining whether one could obtain a writ of habeas corpus outside the Rule 32 context and interpreting the dangerous crimes against children sentencing statute. He states in this court that the trial court “refus[ed] to rule” on his motion for declaratory judgment. But the court denied his motion as a whole, including any request for declaratory relief. We agree with its conclusion that such a judgment indeed would be inappropriate. Frank’s arguments center largely on the rulings made in his previous Rule 32 proceeding, which, as discussed above, cannot be challenged here. And, in any event, Frank’s conviction is final, and he has had the opportunity to challenge it, so his arguments amount to a request for an advisory opinion, which we will not provide. *See Ariz. State Bd. of Dirs. for Junior Colls. v. Phx. Union High Sch. Dist. of Maricopa Cnty.*, 102 Ariz. 69, 73, 424 P.2d 819, 823 (1967) (declaratory judgment unavailable when judgment advisory or no justiciable issue between parties); *Hughes v. Connick*, 942 So.2d 1076, 1079 (La. Ct. App. 2006) (declaratory judgment available in criminal context only when individual threatened with prosecution, not available after conviction when no “actual, justiciable

controversy” provides right of action); *Hall v. State*, 646 N.W.2d 572, 578 (Neb. 2002) (Hall had “[e]qually serviceable remedies . . . within the context of his criminal prosecution” and therefore actions under “Uniform Declaratory Judgment Act were not proper”); *see also* A.R.S. §§ 12-1831 through 12-1846 (Uniform Declaratory Judgments Act); *cf. Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶¶ 47-49, 132 P.3d 1187, 1196 (2006) (party may not use complaint for declaratory judgment as substitute for timely request for judicial review of administrative order). Thus, for all these reasons, the judgment of the trial court denying Frank’s petition is affirmed.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge